

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
June 19, 2014**

Members Present

Bryan Provencal, Chairman
Bill O'Brien, Vice Chairman
Norma Collins, Clerk
Tom McGuirk
Ed St. Pierre

Others Present

Joan Rice, Secretary

Chairman Provencal called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Board members were introduced.

PETITION SESSION

21-14...The Petition of Gabriello Gabrielli for Relief with Appeal of Decision of Town of Hampton Planning Board for property located at 15 Church Street to renew the previously approved temporary parking lot for another year pursuant to Appendix A-1 (temporary parking lot review) of the site plan regulations. This property is located on Map 275, Lot 45 and in the RCS Zone.

Jay Nadeau and Cory Caldwell, representing Mr. Gabrielli, came forward. Mr. Nadeau said they wish to appeal the Planning Board decision of May 7, 2014. Mr. Gabrielli purchased this property in 1971. It was built between 1924 and 1926. At the time Mr. Gabrielli purchased the property it had 10 units (2 in the basement). He evicted the tenants in the basement and since that time he has had 8 units.

On August 1, 2012, they appeared before the Planning Board for a temporary parking permit. The board granted one space per unit. Mr. Gabrielli wanted to obtain another temporary permit in May, but it was denied. This was based on a letter from Town Manager Fred Welch which said there must be 17 spaces.

Mr. Caldwell showed three drawings which showed: 1) parking approved in 2012 which was 13 for tenant parking and 12 for lease. That approval expired in October 2013; 2) parking is almost identical to Drawing 1. Only difference is location of some tenant spaces; 3) parking shown as it would look in 1971. Mr. Caldwell said there is very little difference between these plans.

Questions from the Board

Mr. McGuirk asked if the units are year round. Mr. Nadeau said they are. Mr. McGuirk asked about change of use. Mr. Nadeau said he didn't know. Mr. McGuirk said if an additional use is being added to the land it is an improvement and current zoning must be used. The only thing that could be grandfathered is the structure with no additional improvements.

Comments from the Audience

Wanda Robertson, Assistant Town Attorney, said she was representing the Planning Board. She asked the Board to uphold the Planning Board decision. The decision was based on the memo from Mr. Welch who decided the previous approval was an error. The parking lot is no longer grandfathered so 17 spaces are needed.

Tim Buchannan, 3 Charles Street, said the existing spaces in the last permit were done incorrectly. There are problems with ingress and egress. Mr. Buchannan said he would appeal if this petition is not denied.

Mark Olsen, Chairman of the Planning Board, defended the decision of the Planning Board. Mr. Olsen said his board feels the intensity has increased. Right now they are not abiding by what they are asking for.

Back to the Board

Chairman Provencal said he felt a temporary permit should not have been granted previously without going to the Zoning Board.

Mr. St. Pierre said it is time for the property to conform to current regulations. Mr. St. Pierre said he would not vote to overturn the decision of the Planning Board.

Moved by Mr. St. Pierre, seconded by Ms. Collins, to deny petitioner's request to overturn the Planning Board decision of May 7, 2014 regarding this property.

Vote: 4 yes, 0 no, 1 abstention (McGuirk). Motion passed.

22-14...The Petition of Peter D. & Madaleen L. Ross for an Equitable Waiver of a Dimensional Requirement for property located at 91 Leavitt Rd. seeking relief from Article 4.5.1 for a maximum three and a third foot garage encroachment into the front setback. This property is located on Map 205, Lot 11A and in the RA Zone.

Peter Ross and Attorney Peter Saari, Casassa & Ryan, came forward. Attorney Saari said it was necessary for them to come back even though they were previously approved with the stipulation that they would not request more variances. Mr. Ross began building his house

and thought it was okay. When he went to the Planning Board he found he had a 3-1/3 foot encroachment into the front setback. The problem is the curve of the road. By the time Mr. Ross became aware of this, the house was well along in construction. At that point he stopped construction.

Attorney Saari said this was not intentional. The question for this Board is whether or not there is harm. Appearance-wise it will look fine. The hardship is that he designed this house to not have a large garage. This is a case of an honest mistake. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. O'Brien said that the previous approval specifically said no more variances. Mr. Ross said the mistake had already been made when he came before the Board in April, but he was not aware of it

Mr. O'Brien asked about overhang. The presented plan is just foundation. Mr. O'Brien said he would like an opinion from an attorney as to whether there can be a stay on the decision made in April.

Comments from the Audience

Tim Plouffe came forward. Mr. Plouffe said he lives across the street from the property. The house looks good, but you can't change the street for one house.

Back to the Board

Mr. O'Brien said Mr. Ross needs to refile his application asking for the correct distance and would like the Chairman to determine if the April decision can be stayed.

Chairman Provencal said he agreed that the application must be noticed correctly. Ms. Collins said she also felt this should be reviewed by the attorney. Mr. O'Brien said an accurate rendition of the length of the building east to west including the overhang is needed.

At this time, the petitioner chose to withdraw.

23-14...The Petition of David & Elisa Ryng for property located at 17 Dearborn Ave. seeking relief from Article I, Section 1.3, Article III, Section 3.8; and VIII, Section 8.2.3, 8.2.6 to restore 17 Dearborn Ave. as a multifamily (3 unit) house. The property is currently not in compliance with town building and occupancy codes. This property is located on Map 144, Lot 56 and in the RA Zone.

David and Elisa Ryng came forward. Ms. Ryng said they are potential buyers of the property at 17 Dearborn Ave. This property was advertised as a 3-family home. She and her husband want to keep it as that. The property has been vacant for some time and they learned from the Town that it is in violation of several codes. They were not aware that because of the abandonment code the property reverted to the original zoning. They now want to know if they can purchase the property as a 3-family. Ms. Ryng went through the five criteria and said she felt they had been met.

Questions from the Board

Mr. McGuirk said when this property went through foreclosure, it was determined that it could possibly be 2-family, but never 3-family. Mr. McGuirk said it was disturbing that no one was working on the petitioners' behalf. The bank should be held accountable for putting them in this position.

Chairman Provencal said the packet is also incomplete. There are no floor plans, parking layout or plot plan.

Comments from the Audience

Pricilla McGinnis, 11 Dearborn Ave., said when the former owners were there, it was a 3-family unit and had been 3-family for approximately 22 years. It really doesn't lend itself to a one-family. Ms. McGinnis said if this petition is denied it will be a hardship to the neighborhood.

George Bragg, 21 Dearborn Ave. , said he felt this property as a multi-family would be detrimental to property values in the neighborhood.

Mr. Sawyer said he is opposed to the granting of this petition because it is zoned for single family.

Back to the Board

Mr. McGuirk said he did agree that the Lyngs would make the property very nice, but they were obviously misled.

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to deny Petition 23-14.

Vote: 5 yes, 0 no. Motion passed unanimously.

24-14...The Petition of William Reddy for property located on 458 Winnacunnet Rd. seeking relief from Article 4.5.2 for a proposed 6' x 9' two-story enclosed entrance with spiral stairs connecting 1st and 2nd floors. This property is located on Map 222, Lot 76 and in the RB Zone.

William Reddy, petitioner, came forward. He said this property was used as a 2-family previously. He said he wants to turn it into a single-family and Mr. Schultz said he would need a free flowing stairway to do this. Mr. Reddy went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre asked if a spiral staircase is the best way to go. Mr. Reddy said that it was.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to grant Petition 24-14.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

25-14...The Petition of Constance Leima for property located at 887 Ocean Blvd. seeking relief from Article 1.3 and 4.5.2 to build 9' x 14' deck extending from sliding doors west towards the rear of the house. This property is located on Map 168, Lot 76 and in the RA Zone.

Jennifer Hensen came forward. She said they are looking for a variance on the deck in back of the house. Ms. Hensen went through the five criteria and said she felt they had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to grant Petition 25-14 with the restriction that the deck be no closer than 7 feet to the property line.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

26-14...The Petition of Atlantic Gaming for a Special Exception for property located at 169 Ocean Blvd., seeking relief from Article 3.45 to operate charitable gaming room within Hampton Beach Casino building at site of former Summewind Restaurant/Lounge. This property is located on Map 287, Lot 33/28 and in the BS Zone.

Sean Flannagan and Dan Brown of Atlantic Gaming and Attorney Robert Casassa came forward. Attorney Casassa said they had been before the Planning Board and secured waivers of the site review. They have been through the state regulatory process and have all permits.

Attorney Casassa said operation will begin at the end of June and go through the summer and perhaps a couple of weekends in October. The games are regulated by the state. There will be private security. 35% of profits will go to charity, 10% to the state and the remainder to the operator. There is adequate ingress and egress. Attorney Casassa went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. McGuirk asked if there were enough charities to sustain this and the operation at 81 Ocean Blvd. Mr. Brown said there is actually a waiting list.

Mr. O'Brien asked how many days a charity can have. Attorney Casassa said ten days total per year. Mr. O'Brien said he would like the same restrictions that were given to 81 Ocean Blvd.

Mr. McGuirk said he felt 81 Ocean Bld. has enhanced the neighborhood.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. St. Pierre said he saw no problem with this proposal. However, care should be taken to not saturate the beach with this type of operation.

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to grant Petition 26-14 with the following stipulations:

1. Gambling is restricted to floor area depicted in the application
2. Signs should be kept to a minimum and must meet current law.
3. Hampton charities and charities from abutting towns will have first option.
4. There must be full compliance with any reasonable request of the Chief of Police.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

27-14...The Petition of Tuck Realty Corporation for property located at 139 Mill Rd. seeking relief from 4.2 (including FN 22) and 4.3 to subdivide an existing house lot containing just under an acre of land into 2 lots, each just under a half acre, one with an existing single-family residence and the other with a proposed family residence, requiring frontage and lot width variance. This property is located on Map 127, Lot 57 and in the RA Zone.

Attorney Peter Saari and Joe Coronati, Jones & Beach, came forward. Attorney Saari said the petitioner desires to divide an oversized parcel of land into two lots. Other lots in the neighborhood are very small. This will not change the character of the neighborhood. Petitioners have agreed to provide fencing between the property and the house in back.

Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Collins asked which way would the new house face. Mr. Coronati said it will face Mill Road.

Mr. O'Brien said he would abstain because FN 22 is not met.

Comments from the Audience

Jane Abbott, 9 Mace Road, came forward. She said she did not want a house directly behind her backyard.

Mike Mortimer, 135 Mill Road, said the 66 foot frontage is really small. Mr. St. Pierre asked Mr. Mortimer what his frontage is. Mr. Mortimer replied that his frontage is 80 feet. Mr. Mortimer said he was also concerned about flooding and the driveways.

Sharon Polchek, 15 Mace Road, said she was concerned about flooding and the noise level.

Back to the Board

Mr. St. Pierre said the 66 foot frontage concerned him. Chairman Provencal agreed and said he also had an issue with the driveway. There should be one entrance to the driveway. It was suggested that the division of the property could be done in such a way as to increase the frontage on the lot depicted with 66 foot frontage and there could be a common driveway which would branch in two after entrance into the property.

At this time, Attorney Saari said they would like to withdraw without prejudice.

Moved by Mr. St. Pierre, seconded by Mr. O'Brien, to allow Petition 27-14 to be withdrawn without prejudice.

Vote: 5 yes, 0 no. Motion passed unanimously..

BUSINESS SESSION

Approval of Minutes

Moved by Mr. St. Pierre, seconded by Ms. Collins, to approve the Minutes of May 15, 2014 as amended.

Vote: 5 yes, 0 no. Motion passed unanimously.

Adjournment

There being no further business, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Joan Rice
Secretary